

08/458,033
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tautomeric form of the salt, and a solvate of the salt, to a human or non-human mammal in need thereof. Dependent claims 19-40 set forth various further embodiments of the invention.

The points raised in the Office Action are now addressed.

Rejection under doctrine of obviousness type double patenting

In the Office Action dated May 3, 2002, claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U S Patent No. 5,521,201.

Claim 1 of US Patent No. 5,521,201 is directed to a method for the treatment and/or prophylaxis of atherosclerosis in a human or a non-human mammal which comprises administering to said human or non human mammal an effective amount of 5-(4-[2-(N-methyl-N-(2-pyridyl)amino)ethoxy]benzyl) 2,4-thiazolidinedione, or a tautomeric form thereof, and/or a pharmaceutically acceptable salt thereof and/or a pharmaceutically acceptable solvate thereof.

Claims 1-12 of the present application have been canceled, and new claims 17-40 are directed to methods for the treatment of type II diabetes in a human or non-human mammal, as more fully defined in the claims. It is respectfully submitted that the present claims are patentably distinct over the claims of US Patent No. 5,521,201. Reconsideration and withdrawal of the rejection is respectfully requested.

Applicants note commonly owned, US Patent No. 6,288,095, which claims a method for the treatment of Type II diabetes.¹ In order to expedite prosecution of the present application, Applicants are submitting herewith a Terminal Disclaimer under 37 CFR 1.321 over this patent.

Applicants note that an Amendment and Request to correct inventorship under 37 CFR 1.58(b) is being submitted concurrently herewith. Applicants will submit a Supplemental Declaration in accordance with 37

¹ A copy of this patent is provided with the Information Disclosure Statement filed concurrently with this response.

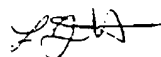
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CFR 1.67, reflecting the change in inventorship and correcting clerical errors in the signed Declaration previously submitted, promptly upon receipt of the signed Supplemental Declaration.

Applicants believe that this reply is completely responsive to each ground of objection and/or rejection in the Office Action dated May 3, 2002. Further examination in light of this response is respectfully requested.

If it would facilitate examination of the application, the Examiner is invited to confer with the undersigned Attorney for Applicants.

Respectfully submitted,



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